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The Abacha II Case: a successful tripartite cooperation of asset return - the Swiss Perspective

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Agenda

- Introductory Figures
- Switzerland's Main Restitution Cases
- The Abacha II Case
 - Asset Freeze and Confiscation
 - The tripartite **Memorandum of Understanding** (Nigeria, Switzerland, World Bank)
 - **Principles** reflected in the Abacha II MoU
 - **Restitution to the benefit of the victims and not the offenders**
 - **Use of existing institutional framework**
 - **Transparency and accountability**
 - **Inclusion of non-government stakeholders**



Introductory Figures

- Every year between **USD 20 and 40 billions of public funds** are embezzled (equivalent of **20% to 40%** of the global ODA).
- Switzerland has over 30 years of experience in the field of «*asset recovery*» (first case: Marcos, Philippines)
- Since 1986, Switzerland has returned nearly USD 2 billions of stolen assets to concerned countries.



Switzerland's Main Restitution Cases (in USD Mio.)

2002	Montesinos / Peru	92
2003	Marcos / Philippines	684
2005	Abacha I / Nigeria	700
2005	Angola I	24
2007	Kazakhstan I	115
2012	Kazakhstan II	48
2012	Angola II	43
2017	Abacha II / Nigeria	321



Brief historical outline of the Abacha II case

- **Abacha I:** Switzerland returned USD 700 Mio. under the monitoring of World Bank
- Following Abacha I, Swiss prosecutors conducted criminal proceeding against Sani Abacha's son, Abba Abacha (hereafter: **Abacha II**).
- 2006: **freezing** of Abba Abacha's funds.
- Summer 2014: **Comprehensive settlement** between Fed. Government of Nigeria and the Abacha family:
 - Agreement to return the funds to Nigerian state, combined with
 - Dropping of criminal proceedings against Abba Abacha
- **11 December 2014:** Attorney General of the Canton of Geneva ordered the **confiscation of USD 321 millions** 5



Letter of Intent

- March 2016: Signing of a **Letter of Intent** between Nigeria and Switzerland
 - Letter of Intent was foundation for subsequent negotiations on restitution modalities
 - Emphasising principles of mutual respect and cooperation
 - Highlighting that returned funds should benefit the Nigerian population
 - Transparent and efficient restitution
 - Intention to maintain regular exchange throughout the restitution process.
- March 2016 – December 2017: Negotiation of MoU



Memorandum of Understanding

- 4 December 2017: **Signing of MoU** in Washington, D.C.
- Legally binding tripartite agreement:
 - Government of the **Federal Republic of Nigeria**
 - Federal Council of **Swiss Confederation** (Swiss Government)
 - **World Bank** (Country Director Nigeria)
- MoU regulates:
 - **Transfer of the funds** from Switzerland to Nigeria
 - Mechanism for the return for the benefit of the population; **identifies project** (National Social Safety Nets Project; NSSNP; Targeted Cash Transfers)
 - **WB** mandated with **Monitoring**
 - Inclusion of **CSOs** as third party monitoring mechanism
 - Contains **responsibility and anti-corruption clauses.**



International Standards reflected in MoU

MoU makes reference to, and fits into, the framework of existing international standards:

- Article 25 of the **Addis Abeba Action Agenda**
- Goal 16 of the **2030 Agenda for Sustainable Development**
- Chapter V of **UNCAC**, in particular Article 57 Section 5
- **Global Forum on Asset Recovery (GFAR) Principles** reflected in MoU



Beneficiaries

Article 2 Section 1:

«The scope of the MoU is to define the mechanisms for the return of the Funds to the Federal Government of Nigeria for the benefit of the people of Nigeria (...).».



Use of existing institutional framework

Article 2 Section 2 of MoU between NGA, CH & WB:

«The Funds shall be utilized by the Federal Government of Nigeria exclusively for the purpose of financing Targeted Cash Transfers (...).»



Transparency and accountability

- *Art. 1 Section 1 Transparent & efficient restitution*
- *Art. 1 Section 4 Regular Exchanges*
- *Art. 5 Monitoring by World Bank*
- *Art. 7 Information Sharing*
- *Art. 11 Disclosure of MoU to public*
- *Art. 13 Anti-Corruption*



Inclusion of non-government stakeholders

Article 6 MoU Inclusion of CSOs

«The Federal Government of Nigeria shall engage, (...), civil society organizations (CSO) to participate in the monitoring of Targeted Cash Transfers, where the funds will be applied. (...)»



Conclusions

- CH learns from each case and is thereby enlarging and further developing its expertise in asset return.
- MoU on Abacha II is based on **partnership**; success of return heavily depends on the cooperation between parties; « *It takes two to tango* ».
- Experience shows that every return case requires a case-specific assessment of the restitution mechanism (**no one-size-fits-all solution / use of existing struct.**).
- **Monitoring through WB** (neither requesting nor requested state); **implication of the CSO** to guarantee that returned funds benefit the poorest members of society



Brochure

«No Dirty Money»

POUR QUE LE CRIME NE PAIE PAS

L'expérience de la Suisse en matière
de restitution d'avoirs illicites



Suisse.

https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/edas-broschuere-no-dirty-money_EN.pdf